

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TEXAS
3 AUSTIN DIVISION

4 EVDOKIA NIKOLOVA) Docket No. A 19-CA-877 RP
5 vs.)
6 UNIVERSITY OF TEXAS) Austin, Texas
7 AT AUSTIN)
8) March 10, 2022

9 TRANSCRIPT OF TRIAL TESTIMONY OF THOMAS GLASS
10 BEFORE THE HONORABLE ROBERT L. PITMAN

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DEFENDANT'S
EXHIBIT

C

1 MR. SCHMIDT: We call, your Honor, Tom Glass
00:00:01 2 to the witness stand.

00:00:27 3 MR. DOWER: Your Honor, before this witness
00:00:29 4 starts testifying, can we ensure that our expert who's
00:00:31 5 going to be providing rebuttal is present?

00:00:33 6 THE COURT: Sure. Sir, before you take a
00:00:35 7 seat, can you please raise your right hand to be sworn.

00:00:38 8 THE CLERK: You do solemnly swear or affirm
00:00:38 9 that the testimony which you may give in the case now
00:00:38 10 before the Court shall be the truth, the whole truth,
00:00:45 11 and nothing but the truth?

00:00:45 12 THE WITNESS: I do.

00:00:45 13 THE COURT: Please be seated. You can go
00:00:56 14 ahead and start the preliminaries if you want his name
00:00:57 15 and credentials.

00:01:00 16 THOMAS GLASS, called by the Plaintiff, duly sworn.

00:01:00 17 DIRECT EXAMINATION

00:01:01 18 BY MR. SCHMIDT:

00:01:01 19 Q. Would you introduce yourself to the jury?

00:01:03 20 A. My name is Tom Glass. Thomas Glass.

00:01:07 21 Q. And can you tell us a little bit about yourself?

00:01:09 22 A. I have a Bachelor's Degree in Business. I stayed
00:01:16 23 long and got a Master's Degree in Accounting. Later in
00:01:18 24 life, I went back and got a Master's Degree and a Ph.D.
00:01:22 25 in Economics. I've been a Certified Public Accountant

00:01:27 1 since 1967 and I have -- I've practiced accounting for
00:01:35 2 many years and actually just did my last tax return last
00:01:39 3 year. And I have been doing this kind of work
00:01:45 4 increasingly since the late 1980s. I've testified in
00:01:50 5 about 125 cases. I've been hired in over 500 cases.
00:01:58 6 And the kind of testimony I'm giving today is indicative
00:02:03 7 of the type of testimony I've given quite often.

00:02:07 8 Q. So Dr. Glass, Ph.D., correct?

00:02:09 9 A. Yes.

00:02:10 10 Q. All right. And if I'm just a shorthand guy,
00:02:15 11 you're a numbers guy; is that right?

00:02:16 12 A. I am a number cruncher, yes.

00:02:21 13 Q. Okay. So we've asked you to look at the issues
00:02:26 14 in this case. Not issues but the numbers in this case
00:02:29 15 and provide -- actually, what have we asked you to do?

00:02:34 16 A. Yes. You asked me to take a look and make
00:02:38 17 certain assumptions about Dr. Nikolova's compensation in
00:02:43 18 the future, and what it was likely going to be, and what
00:02:46 19 it would be under several different scenarios.

00:02:50 20 Q. And I believe there might also be issues not only
00:02:53 21 in the future but in the past, some backpay?

00:02:56 22 A. Yes. Yes.

00:02:57 23 Q. Okay.

00:02:58 24 A. Since she was denied tenure, yes.

00:03:00 25 Q. Okay. And so, can you explain, what is the

00:03:04 1 process that you use? How do you do this?

00:03:06 2 A. Well, we use a -- what I call a "but for"
00:03:12 3 analogy. But for the action that she complains about,
00:03:16 4 what is likely to happen in the past and in the future,
00:03:21 5 and what's the difference between what she could have
00:03:23 6 made had she been granted tenure in 2019. First is what
00:03:30 7 she's likely going to make as a result of being denied
00:03:33 8 tenure.

00:03:35 9 Q. And how do you come up with these numbers? How
00:03:38 10 do you figure that out?

00:03:38 11 A. Well, we know what she was actually making at the
00:03:42 12 time that she was denied tenure. We know what a
00:03:48 13 similarly situated colleague of her was making after he
00:03:51 14 was granted tenure in 2019. And then, the Social
00:03:58 15 Security Administration Board of Trustees has to make
00:04:02 16 long-term projections about the health of the Social
00:04:05 17 Security system, and they've got a board of trustees --
00:04:09 18 a board of actuaries who project what increases in pay
00:04:16 19 is going to be actually for the next 75 years. So they
00:04:20 20 have a -- and it's well thought of in the economic
00:04:26 21 community as a fairly accurate predictor of what
00:04:33 22 salaries are going to be.

00:04:34 23 So we take the salaries that she was making in
00:04:37 24 2019 and we take the salary that the tenured professor
00:04:40 25 was making in 2019, and then, we increase those by what

00:04:44 1 the Social Security Administration says the average
00:04:48 2 increase for all American workers is going to be for
00:04:51 3 each year till her projected retirement; and then, we
00:04:57 4 sum all those up and do some magic and put numbers on a
00:05:02 5 piece of paper.

00:05:02 6 Q. And by magic, you're talking about crunching
00:05:06 7 data?

00:05:06 8 A. Crunching data. The one thing I haven't talked
00:05:09 9 about is, if she is -- if the jury decides she's
00:05:16 10 entitled to damages, she will be paid that money today
00:05:18 11 or in the near future, instead of the money getting paid
00:05:22 12 out to her over her next 30 or 40 years. And so, to
00:05:30 13 know that she would be able to invest those moneys and
00:05:33 14 earn interest on that, we do a process called
00:05:37 15 discounting. And we use interest rates on a safe
00:05:43 16 investment, which we use United States treasury bonds,
00:05:49 17 and we discount that money back to what's called present
00:05:52 18 value.

00:05:53 19 Such that if you put all that money that
00:05:57 20 you're going to give her into a savings account, she
00:06:00 21 would be able to draw out the amount of money that we're
00:06:02 22 projecting that she would lose over the next several
00:06:05 23 years.

00:06:06 24 Q. So if I'm understanding you correctly, \$100,000
00:06:12 25 now is different than \$100,000 paid out over the course

00:06:16 1 of time.

00:06:17 2 A. Right. If you want somebody to be able to get
00:06:19 3 \$100,000 in 10 years, you don't give them \$100,000
00:06:24 4 today. You give them a lesser amount of money so that
00:06:26 5 they can take that 100 -- that 90,000 and invest it and
00:06:32 6 at the end of 10 years, it will be \$100,000.

00:06:35 7 Q. So it's reduced for the time value of money?

00:06:37 8 A. Exactly.

00:06:38 9 Q. Okay. And so, talk with us about are there any
00:06:46 10 other factors you take into account in this case? Is
00:06:48 11 there -- retirement play a role in this?

00:06:51 12 A. Well, the Department of Labor publishes
00:06:55 13 statistics on how long a person of a particular sex and
00:07:03 14 education and age is likely going to work in the future.
00:07:05 15 So, for instance, Dr. Nikolova at the time of her denied
00:07:12 16 tenure, based upon her age and education that she has a
00:07:17 17 Ph.D., she had a work life expectancy to age 65.6. In
00:07:25 18 other words, the average person in that category of
00:07:29 19 demographics would work until they were 65.6. She has
00:07:34 20 expressed an interest of working until age 70, which is
00:07:40 21 very, very common for Ph.D.s.

00:07:42 22 I'm 79 years old and I'm still working. So I
00:07:46 23 have made alternative computations, one to age 65.6 and,
00:07:52 24 secondly, to age 70.

00:07:54 25 Q. Okay. Let's offer into exhibit the next number

00:08:03 1 that we're at is Plaintiff's Exhibit 238, I believe.

00:08:18 2 MR. DOWER: So you're going to be offering.

00:08:19 3 MR. SCHMIDT: The charts.

00:08:20 4 MR. DOWER: The new charts -- I don't think
00:08:22 5 -- I might have missed it, but I don't think you've
00:08:24 6 covered -- laid the foundation for changes.

00:08:29 7 MR. SCHMIDT: Okay.

00:08:29 8 MR. DOWER: Can you just lay that foundation
00:08:32 9 first?

00:08:33 10 Q. (BY MR. SCHMIDT) Dr. Glass, in this lawsuit, you
00:08:39 11 provided an expert report some months or possibly years
00:08:44 12 ago, correct?

00:08:44 13 A. I did.

00:08:45 14 Q. And today, because that report was based on a
00:08:49 15 trial date, you're calculating the damages up to the
00:08:53 16 date of trial, correct?

00:08:54 17 A. Right. And the primary difference, 99 percent of
00:08:59 18 the difference between my report of last year and my
00:09:02 19 report of this year is that the interest rates that
00:09:06 20 we're talking about that I've used for discounting have
00:09:09 21 gone substantially up, which reduces her damages because
00:09:13 22 she's -- it reduces the amount of money that you would
00:09:17 23 have to give her today to pay out the money in future.

00:09:21 24 Q. But also, at the time that you submitted that
00:09:24 25 report, I think there was a different trial date that

00:09:26 1 was earlier in time?

00:09:28 2 A. Right.

00:09:28 3 Q. And so, you've also extended it out to meet
00:09:31 4 today's trial date?

00:09:32 5 A. That's correct.

00:09:32 6 Q. Okay. So with that, we would offer Plaintiff's
00:09:38 7 Exhibit 236.

00:09:39 8 THE COURT: Any objection?

00:09:40 9 MR. DOWER: Well, your Honor, what he just
00:09:46 10 said I don't think was accurate. I think the numbers
00:09:49 11 have actually gone up, not down, just looking at the
00:09:52 12 comparison between the two charts. But can you ask him
00:10:02 13 what the other one percent was? He said 99 percent.

00:10:05 14 MR. SCHMIDT: I think he said it was the
00:10:07 15 different -- the interest rate, different kind of --

00:10:09 16 Q. (BY MR. SCHMIDT) Dr. Glass, part of the change in
00:10:12 17 this is that it's updated to this trial, correct?

00:10:14 18 A. Yes.

00:10:14 19 Q. And then, you also mentioned that there was
00:10:17 20 another change that you've made because of a change in
00:10:20 21 interest rates?

00:10:21 22 A. Right.

00:10:22 23 Q. Can you explain that?

00:10:23 24 A. Interest rates have increased since, I think,
00:10:28 25 June of 2020 is when I -- '21 is when I produced my

00:10:34 1 original report. Interest rates have increased, and
00:10:36 2 therefore, the present value of the future losses has
00:10:39 3 gone down. And I think the numbers are down from what
00:10:47 4 my earlier report is, but if not, I can explain that.

00:10:50 5 Q. Well, it may be down for that reason, but then,
00:10:52 6 they're up because it's a longer period of time. Does
00:10:56 7 that make sense?

00:10:56 8 A. Yes.

00:10:57 9 MR. DOWER: Mr. Schmidt, if you'll agree to
00:11:01 10 do the same redactions you did on 236, I will not
00:11:05 11 object.

00:11:09 12 MR. SCHMIDT: Yes. And I think this is
00:11:11 13 redacted.

00:11:13 14 MR. DOWER: Not the one you gave me. No
00:11:29 15 objection.

00:11:29 16 THE COURT: All right. So admitted. Thank
00:11:31 17 you.

00:11:31 18 Q. (BY MR. SCHMIDT) Okay. So do you have a copy of
00:11:35 19 your report?

00:11:35 20 A. I do.

00:11:36 21 Q. Okay. So I'm going to put up -- let me put up
00:11:54 22 the charts and have you go through them. Does that make
00:11:56 23 sense to you?

00:11:57 24 A. Yes.

00:11:57 25 Q. Okay. This is a chart that you've compiled to

00:12:06 1 talk about the economic damages in this case; is that
00:12:10 2 right?

00:12:10 3 A. Yes.

00:12:10 4 Q. And can you walk us through what -- how you
00:12:15 5 calculated those damages and what they are?

00:12:16 6 A. Okay. The -- I show here, this is the to age
00:12:24 7 65.6. And I show the three different scenarios that we
00:12:30 8 were talking about, and what we're talking about here is
00:12:34 9 the difference between what she would have made had she
00:12:39 10 been granted tenure in 2019. And then, the scenario No.
00:12:47 11 1 is the tenure was not granted on September 1, 2019,
00:12:53 12 but assuming that tenure would be granted, effective
00:12:57 13 9-10-2023, four years later. And I show that the
00:13:02 14 differences in what she would have made had she been
00:13:04 15 granted tenure and what she will make if she's granted
00:13:09 16 tenure in 9-1-2023, to the date of trial, her lost is
00:13:16 17 \$44,500. The future losses are 274,001, and so, her
00:13:24 18 total losses would be \$318,501.

00:13:31 19 Now, the scenario number two --

00:13:33 20 Q. Before you go there, can you explain if her
00:13:36 21 losses to date of trial are 44,500, how do you project
00:13:42 22 future losses?

00:13:43 23 A. Then the future losses, I take the amounts of
00:13:47 24 money that she was -- would be making in 2023 and I,
00:13:52 25 again, project out at the Social Security

00:13:55 1 Administration's rate of increase, and then, I used the
00:13:58 2 discount rates we're talking about and I add all those
00:14:02 3 up, and they come up to 274,000.

00:14:06 4 Q. But I guess even more fundamental question -- and
00:14:11 5 I'm not a math guy -- is that so she gets tenure two
00:14:15 6 years late in her career. Is it your -- can you
00:14:20 7 explain, then, why getting tenure two years late in your
00:14:23 8 career will then cause losses into the future?

00:14:27 9 A. Well, I think most of us would have experience
00:14:30 10 with lots of different things that you just don't get
00:14:35 11 caught up. If your neighbor got a raise last year and
00:14:40 12 you don't get a raise till next year, is there any
00:14:43 13 reason to believe that you would ever catch up to him?
00:14:47 14 He will continue to get raises and you will continue to
00:14:50 15 get raises. So there's no reason to believe that you're
00:14:56 16 going to catch up. A marathon runner that gets a mile
00:14:59 17 head start, there's no reason to believe that you would
00:15:02 18 ever catch up to that marathon runner, if y'all are both
00:15:06 19 kind of equal kind of people, you're going to stay
00:15:08 20 behind.

00:15:09 21 Q. Okay. So getting -- not getting a promotion two
00:15:14 22 years, you know, late or two years early will impact the
00:15:18 23 amount of money you get throughout the rest of your
00:15:21 24 career?

00:15:21 25 A. Absolutely.

00:15:21 1 Q. Okay. So go ahead.

00:15:24 2 A. And then, the second scenario was assuming no
00:15:27 3 tenure is ever granted but she continues at the salary
00:15:32 4 level of an assistant professor, and that means that --
00:15:38 5 and the university's not going to let her continue as an
00:15:41 6 assistant professor forever. It's an up or out kind of
00:15:48 7 situation: Either you get granted tenure or you go
00:15:50 8 somewhere else. But we're just -- I'm using the salary
00:15:56 9 of an assistant professor that's the level of money that
00:15:58 10 she would make for test of her career.

00:16:00 11 So in that case, you have the same losses to
00:16:03 12 the date of trial, 44,501, but her future losses are
00:16:08 13 substantially more because the salary as an assistant
00:16:13 14 professor is substantially less than that of an
00:16:16 15 associate professor. So that's 508,000 for a total of
00:16:20 16 552.

00:16:22 17 Q. Okay. So again, her losses to the date of trial
00:16:26 18 of not getting that -- the raise that you get as an
00:16:30 19 assistant professor is 44,500, but then, it's going to
00:16:33 20 impact her into the future to the tune of around
00:16:36 21 500,000. Go ahead with scenario three.

00:16:40 22 A. Then the third assumption -- and this is kind of
00:16:43 23 a tricky one. Assuming that no tenure is ever granted
00:16:47 24 and she terminates on August 31, 2023, when she doesn't
00:16:53 25 get tenure next year, and she finds no substantially

00:16:58 1 equivalent employment, again, her losses to the date of
00:17:02 2 trial are 44,500. The future losses in this case, the
00:17:08 3 assumption is she doesn't have any earnings after 2023.

00:17:13 4 So you've got a big number of 3,978,000 and for a
00:17:20 5 total losses of 4,022,000. Now, that is a kind of a
00:17:27 6 wild assumption because nobody is not going to work
00:17:31 7 after age -- after 2023. But I was asked to do this on
00:17:37 8 the basis that the court could determine if she is not
00:17:42 9 able to find substantially equivalent employment, if she
00:17:45 10 has to go out and be a greeter at Wal-Mart, do we even
00:17:50 11 consider that, those earnings if she's not able to
00:17:54 12 consider substantially equivalent employment.

00:17:57 13 And I'm not up here to have any opinion
00:18:00 14 about whether that's correct or not. I'll let the
00:18:03 15 lawyers.

00:18:04 16 Q. So the idea would be if you are a professor and
00:18:08 17 your job is essentially ruined and you won't be able to
00:18:11 18 be a professor in another year, then are you, you know
00:18:17 19 -- do you then have to take something less?

00:18:19 20 A. Right.

00:18:19 21 Q. And, you know, and so, if you don't have to take
00:18:23 22 something less, that would be the numbers; is that
00:18:26 23 right?

00:18:26 24 A. That's correct.

00:18:26 25 Q. Take a lower type of job.

00:18:36 1 You've also done a separate calculation. This is
00:18:42 2 on page 2 of this exhibit. And can you explain that?

00:18:49 3 A. And all I could tell you is, I've added four
00:18:52 4 years, four-point-something years to that to take the
00:18:55 5 losses out to age 70. So the losses to the date of
00:18:58 6 trial are identical. The future losses are somewhat
00:19:03 7 hard and the some total losses are somewhat higher.

00:19:07 8 Q. Okay. And just we're not going to go into it,
00:19:10 9 but to show the jury, this is.

00:19:18 10 A. These are my year-by-year calculations of how
00:19:23 11 these different scenarios work.

00:19:25 12 Q. Okay. And this is the actual data and the
00:19:28 13 calculations?

00:19:29 14 A. Yes.

00:19:29 15 Q. Applying interest rates, those kinds of things;
00:19:32 16 is that right?

00:19:33 17 A. Yes.

00:19:33 18 Q. And you've got those --

00:19:34 19 A. They'll put you -- if you have insomnia, this
00:19:36 20 will put you to sleep in a hurry.

00:19:39 21 Q. Okay. So just before I let you go, I believe
00:19:50 22 that the defendants, U.T., have an economist similar to
00:19:57 23 you. Certainly not as good as you. I'm joking. That's
00:20:00 24 a joke -- who will be making some criticisms of your
00:20:05 25 report and challenging some things in your report.

00:20:07 1 A. He's going to hurt my feelings a lot if he does.

00:20:10 2 Q. Okay. What is your response to the criticism
00:20:14 3 that you believe he'll make?

00:20:15 4 A. Well, I've looked at them briefly, and I know one
00:20:20 5 of his comments was, I didn't use market rates of
00:20:22 6 interest. Well, I did use market rates of interest.
00:20:26 7 I've looked them up yesterday and they're the current
00:20:30 8 rates that those are being paid on United States
00:20:33 9 treasury bonds mature out for the next 40 or 50 years.

00:20:38 10 Another one was, he didn't like the fact that I
00:20:41 11 didn't let her catch up. We talked about that a minute
00:20:44 12 ago. He says eventually, she's going to catch up to the
00:20:48 13 guy that was granted tenure four years before, but
00:20:51 14 that's just not right. You are at a place where you
00:20:56 15 are, and unless one of you screws up, y'all are both
00:20:59 16 going to keep going up the salary ladder. And I can't
00:21:03 17 really remember anything substantive else that he
00:21:06 18 complained about.

00:21:07 19 Q. All right. Your Honor, Mr. Glass, I have no
00:21:11 20 further questions. Pass the witness.

00:21:22 21 CROSS-EXAMINATION

00:21:22 22 BY MR. DOWER:

00:21:33 23 Q. Dr. Glass, while I'm getting set up here, do you
00:21:35 24 remember, we had a trial together a few years ago?
00:21:39 25 Actually, it was in 2018?

00:21:41 1 A. I don't recall.

00:21:41 2 Q. You don't recall. I must not have been memorable
00:21:45 3 then. Well, I'll just represent to you, I have a
00:21:48 4 Bachelor of Science in Economics, and talking to you is
00:21:54 5 like the only time I ever get to use it. So I'm going
00:21:56 6 to enjoy our conversation very much.

00:22:19 7 So let's start with your scenario one. I'll
00:22:25 8 go ahead and pull it up on the computer so that we're
00:22:30 9 both looking at it. Okay. I can zoom in a little bit,
00:22:51 10 but do you see this as your scenario one?

00:23:00 11 A. Okay.

00:23:00 12 Q. All right. So just want to make sure I
00:23:04 13 understand what you did. So scenario one assumes that
00:23:08 14 she's granted tenure on September 1st, 2023, correct?

00:23:12 15 A. Yes.

00:23:12 16 Q. And so, you calculate the difference between what
00:23:17 17 she is making to what you believe that she would be
00:23:21 18 making if she -- if she had received tenure, correct?
00:23:28 19 If she had received tenure in February of 2019.

00:23:31 20 A. Okay. Just let me say that the base case is that
00:23:34 21 she was granted -- that she would have been granted
00:23:37 22 tenure in 2019. And then, scenario one is, she didn't
00:23:43 23 get granted tenure in 2019, but would get granted tenure
00:23:48 24 in 2023.

00:23:50 25 Q. Okay. Thank you for that. That's much clearer

00:23:53 1 than what I said. So on August 31st, 2020, your base
00:23:58 2 case is your assumption about what she would have made
00:24:03 3 had she received tenure back in February of 2019.

00:24:08 4 A. That's right. She would have been making one
00:24:11 5 thirty-five-hundred if she'd been granted tenure. She's
00:24:14 6 not going to be making but 114 because she didn't get
00:24:17 7 tenure.

00:24:17 8 Q. So the difference between -- I guess the amount
00:24:20 9 of money that you project her getting as a result of
00:24:23 10 tenure is \$16,000 more or less?

00:24:27 11 A. Yes. 15,861. Yes.

00:24:30 12 Q. So \$15,000, it's, what, roughly ten percent of
00:24:35 13 the salary?

00:24:37 14 A. Never was good with numbers, but that sounds
00:24:39 15 right.

00:24:41 16 Q. And you got the bump, your projection of how much
00:24:46 17 her salary would go up, from another faculty member,
00:24:51 18 correct?

00:24:51 19 A. From another what?

00:24:52 20 Q. From another faculty member?

00:24:53 21 A. Yes.

00:24:54 22 Q. And so, the plaintiffs provided you with that
00:24:59 23 faculty member and that number, correct?

00:25:00 24 A. That's correct.

00:25:01 25 Q. And you don't know whether that's representative

00:25:03 1 of how much of a bump people would generally get, right?

00:25:09 2 A. I do not know that.

00:25:10 3 Q. Could be more?

00:25:12 4 A. Could be.

00:25:13 5 Q. And presumably, the plaintiff's counsel only
00:25:15 6 picked a cheap one, right?

00:25:17 7 A. Yes.

00:25:17 8 Q. And so, then, at some point under scenario one,
00:25:22 9 you have her actually getting tenure on September 1st,
00:25:26 10 2023, correct?

00:25:27 11 A. Yes.

00:25:28 12 Q. And so, if we assume that that brings her up with
00:25:33 13 a peer in the department who got tenured the same time
00:25:37 14 she did, then that would close the damages.

00:25:43 15 A. No, because of the four-year lag. I mean, the
00:25:47 16 person that got tenure in 2019 will have gotten
00:25:53 17 substantial raises before 2023.

00:25:57 18 Q. And your --

00:25:58 19 A. But she's not going to start off at that same
00:26:00 20 level. She's going to.

00:26:01 21 Q. Why do you believe that?

00:26:07 22 A. I don't have any reason not to believe that. If
00:26:10 23 it's somebody that has been promoted four years before
00:26:12 24 me, if I get promoted to that same job, I've got to
00:26:17 25 believe that because of their experience in that job,

00:26:20 1 they will have achieved raises over and above what I'm
00:26:26 2 going to start out in.

00:26:26 3 Q. All right. And if you had at -- you didn't look
00:26:29 4 at U.T.'s, like, historical data, correct?

00:26:32 5 A. Yes.

00:26:32 6 Q. Okay. And if you had looked at that data, we
00:26:37 7 could determine whether or not U.T. is one of the
00:26:39 8 unusual employers that will bring you right on par with
00:26:44 9 people, regardless of when they got tenure.

00:26:47 10 A. I don't know that.

00:26:48 11 Q. Okay.

00:26:55 12 A. What you're trying to tell me is that all
00:26:57 13 associate professors are paid the same amount of money.

00:27:00 14 Q. If it were true that associate professors are
00:27:04 15 effectively paid, you know, within one percent of each
00:27:08 16 other and that it's not correlated with the time they
00:27:10 17 got tenure, then if that were true, then the losses are
00:27:14 18 cut off at the point at which she gets tenure.

00:27:16 19 A. I think that would be true, yes.

00:27:22 20 Q. Okay. And just because I recognize economic
00:27:29 21 jargon is confusing and I spent four years struggling
00:27:33 22 with it as an undergraduate, just to use your metaphor,
00:27:36 23 your metaphor was a runner that if someone else got a
00:27:40 24 head start, you're not going to catch up even if you get
00:27:43 25 the promotion, right?

00:27:44 1 A. That was my metaphor.

00:27:47 2 Q. Right. So if U.T. -- it's going to be clunky,
00:27:50 3 but if U.T. got a helicopter and picked up someone from
00:27:53 4 the racetrack and plopped them right next to that other
00:27:56 5 person who got, you know, tenured before them such that
00:27:59 6 they were on the same place on the racetrack, then the
00:28:02 7 damages are just, you know, for the time before tenure's
00:28:07 8 granted.

00:28:07 9 A. And you're going to take that same helicopter and
00:28:10 10 pick everybody up and move them all up to where they all
00:28:13 11 cross the finish line at the same time.

00:28:15 12 Q. Every time they get a bump from assistant to
00:28:18 13 associate or associate to full?

00:28:19 14 A. Yeah. If they've got that helicopter, you're
00:28:22 15 right.

00:28:25 16 Q. So scenario one had two permutations, and the
00:28:36 17 only difference between them is the work life expectancy
00:28:40 18 -- whether or not she would work till 65 and some change
00:28:43 19 versus 70.

00:28:44 20 A. Yes.

00:28:44 21 Q. You're not offering an opinion about which of
00:28:47 22 those is more likely?

00:28:49 23 A. No.

00:28:50 24 Q. And you're not -- so then, your scenario two is
00:28:54 25 based on her working as an assistant professor for the

00:28:59 1 rest of her career?

00:29:01 2 A. At the salary level as an assistant professor for
00:29:05 3 the rest of her career.

00:29:06 4 Q. And so, you understand that she can't work as an
00:29:09 5 assistant professor at U.T. for the rest of her career
00:29:11 6 because of the up-or-out system, but this scenario
00:29:14 7 assumes that it's the equivalent in terms of pay.

00:29:17 8 A. Yes.

00:29:18 9 Q. Now, let's say -- you know, because you're a
00:29:24 10 damages guy, so the jury's only talking about this if
00:29:27 11 they find for Dr. Nikolova on the -- her claims,
00:29:32 12 correct?

00:29:32 13 A. Right.

00:29:32 14 Q. All right. So let's just assume that and
00:29:35 15 obviously I'm not conceding anything. Let's assume
00:29:37 16 that. What happens if the jury awards the money under
00:29:42 17 scenario two and then, U.T. gives her tenure in a few
00:29:45 18 years?

00:29:45 19 A. She's just got a windfall.

00:29:47 20 Q. Yeah. So everything -- all of the rest of that
00:29:50 21 money is, as you said, just pure windfall. It is money
00:29:53 22 she's going to get basically a double recovery, right?

00:29:56 23 A. Yeah.

00:29:56 24 Q. And under scenario three, it's an even bigger
00:30:02 25 windfall, right?

00:30:03 1 A. Absolutely.

00:30:04 2 Q. In fact, it's almost \$4 million windfall.

00:30:07 3 A. Yes.

00:30:14 4 Q. I'll pass the witness.

00:30:20 5 THE COURT: Anything else, Mr. Schmidt?

00:30:23 6 MR. SCHMIDT: Yes. Couple of quick
00:30:24 7 questions.

00:30:24 8 RE-DIRECT EXAMINATION

00:30:24 9 BY MR. SCHMIDT:

00:30:30 10 Q. First of all, Dr. Glass, on Mr. Dower's
00:30:42 11 helicopter analogy, is the assumption that he's asking
00:30:49 12 you to make is that all U.T. professors make the same
00:30:52 13 salary?

00:30:52 14 A. Yes.

00:30:53 15 Q. So that no one else -- there's no change in
00:30:57 16 salaries. Everybody all stays constant. Once you
00:30:59 17 become a professor, you all make the same salary,
00:31:01 18 there's no raises, no nothing over the next --

00:31:03 19 A. Well, everybody gets equivalent raises, too, I
00:31:07 20 guess, is what he's kind of saying.

00:31:09 21 Q. But under this situation, for you to ever catch
00:31:11 22 up, you know, under normal real life situation, if I
00:31:18 23 make \$100,000 now and somebody else makes \$150,000 now,
00:31:23 24 the only way -- and then, next year, we get a raise and
00:31:27 25 I get 125 and he gets or she gets 175, there's still

00:31:32 1 going to be that gap that keeps going, correct?

00:31:35 2 A. Yes. But he's trying to say that she's going to
00:31:40 3 get promoted to the same salary level that a four-year
00:31:44 4 associate professor is going to make whenever she gets
00:31:47 5 tenure, and that's what I just don't think is going to
00:31:50 6 happen.

00:31:50 7 Q. Right. So she'll get -- she's not going to get
00:31:54 8 promoted to the salary level of somebody up there.

00:31:57 9 A. Right.

00:31:57 10 Q. On this windfall situation, if we are only asking
00:32:00 11 the jury to look at the backpay damages up through the
00:32:04 12 date of trial, there's not a windfall.

00:32:07 13 A. That's correct.

00:32:08 14 Q. Okay. Thank you very much. No further
00:32:10 15 questions.

00:32:13 16 THE COURT: Anything further, Mr. Dower?

00:32:15 17 MR. DOWER: No, your Honor.

00:32:16 18 THE COURT: Thank you, sir. You may step
00:32:17 19 down.

00:32:18 20 THE WITNESS: Thank you. Thank y'all for
00:32:21 21 listening.

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